

**MINUTES OF THE BOARD OF ADJUSTMENT MEETING
EILEEN DONDERO FOLEY COUNCIL CHAMBERS
MUNICIPAL COMPLEX, 1 JUNKINS AVENUE
PORTSMOUTH, NEW HAMPSHIRE**

7:00 P.M.

September 15, 2015

MEMBERS PRESENT: Chairman David Witham, Vice-Chairman Arthur Parrott, Derek Durbin, Charles LeMay, Patrick Moretti, Jeremiah Johnson

MEMBERS EXCUSED: David Rheaume, Christopher Mulligan

ALSO PRESENT: Planning Department: Juliet Walker

Mr. Rheaume and Mr. Mulligan were excused, and Mr. Johnson assumed a voting seat for the meeting.

I. OLD BUSINESS

A) Request for Rehearing regarding property located at 336 Union Street.

DECISION OF THE BOARD

Chairman Witham stated that the applicant submitted documentation to support their request and that there were two main reasons for the request. Members of the Board felt that the apartment was too small, which caused a unique layout and hardship. Chairman Witham recalled that there was concern about the size of the apartment and whether it would meet code, and he had researched it and was unable to find anything. He realized that an ordinance to allow micro apartments was in the works, but he thought an apartment of that size as not allowed. Chairman Witham said that wasn't the overriding reason that he had voted against it because there was a stipulation that it remain a single-family home. He also had concerns about parking on the corner lot and did not feel that there was any new information or that the Board erred in any way.

Mr. Durbin stated that he echoed Chairman's Witham's comments and said the packet didn't claim anything about the Board committing a technical error or that there was information that wasn't reasonably available to the applicant. He said the Board should deny the request, though he might be sympathetic to the micro apartment idea, and he felt that it was too late for the applicant because the applicant did not plead the proper grounds for the Board to grant a rehearing request. Mr. Johnson agreed, saying that it was a 4-3 vote and he didn't see any error or claim of anything that the Board hadn't considered the first time.

*Mr. Durbin made a motion to **deny** the variance as presented and advertised, and Vice-Chair Parrott seconded the motion.*

Mr. Durbin stated that he would incorporate his previous comments in support of the motion to deny the request for rehearing. Vice-Chair Parrott concurred with Mr. Durbin, adding that there was no technical error or new information. He said he had spoken strongly in favor of denying because of his concerns about parking and the chance of putting an additional car on the street in an already congested area, and he felt that it wasn't addressed in the Letter of Appeal.

The motion to deny the request for rehearing passed with all in favor, 6-0.

II. PUBLIC HEARINGS - OLD BUSINESS

G) Case # 7-12

Petitioner: New England Glory, LLC

Property: 525 Maplewood Avenue

Assessor Plan 209 Lot 85

Zoning District: General Residence A

Description: Creation of two lots where one currently exists.

Requests: The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:

1. A Variance from Section 10.521 to allow a lot area per dwelling unit of 3,755 sq. ft. where 7,500 sq. ft. is the minimum required.

(This petition was postponed from the July 28, 2015 and August 18, 2015 meetings.)

SPEAKING IN FAVOR OF THE PETITION

Attorney Bernie Pelech representing the applicant was present to speak to the application and stated that the Cutts Mansion was a historical building that had existed from the early 1800s and had fallen into disrepair. He said the owners spent a lot of time and money to improve the building, and he showed photos of the building in its present condition and what it looked like when it was purchased. Attorney Pelech noted that the Board would see from reviewing the documentation the concerns from many previous boards about the junkyard that existed there. The property became a condominium building and had eight units in the mansion itself, but it would be reduced to six units when completed. He said the applicant proposed to cut off a piece of land, and he explained the grade differential and said if the property were subdivided into two lots, the lot area per dwelling unit would be reduced from 7,000 s.f. to 3,775 s.f., but he noted that a condominium was a different situation. He further explained the condominium form of ownership and how everyone had access to a common area. Attorney Pelech went through the criteria and said that the petition met all of them.

Mr. Johnson asked Attorney Pelech whether he could confirm that access would be able to be created for the lot. Attorney Pelech replied that they had not been able to approach the Department of Transportation (DOT) yet, due to the rule that if a second lot was created, the owner was entitled to a curb cut. The property was accessed only by Cutts Avenue, and they intended to go to the Planning Board and approach the DOT for a driveway permit. Mr. Johnson said he agreed that a condominium setup required less yard usage, but the lot area per unit was controlled density and, even though what the applicant was asking for made sense, the actual variance was for the Cutts Mansion portion, which was a fair amount of dwelling units.

Chairman Witham said he was struggling to approve the petition because it almost gave the owner a clean slate to build it out.. He felt that the owner could get four units on the lot and that there was a Draft for Approval

potential for a large development to fit on the lot. He added that it would be nice if the Board knew the whole project. Attorney Pelech replied that they could return with a site plan. Chairman Witham said he was also concerned about the curb cut location and whether the Planning Department and TAC were comfortable with the ins and outs because it was a tricky juncture that had a lot of site issues. He was leery of saying that it made sense and to just divide it. Attorney Pelech repeated that they could provide more information.

Ms. Cindy Dowd stated that she was one of the owners and that she and her husband had a long track record of trying to do the right thing and not overdevelop properties.

SPEAKING IN OPPOSITION TO THE PETITION

Ms. Gertrude Wallace of 2 Beechwood Street stated that she went by the property all the time and that the only place for the driveway was a bad spot for their anticipated sidewalk. She also anticipated more traffic and added that if the owner didn't get a curb cut across the protected space, they would end up trying to get a right-of-way over the diminished mansion lot. She said it could not be anticipated which way the traffic would go. She also noted that when the owner got the occupancy permit for the carriage house fifteen years before, they relied on the lot size to get the second building occupied, so it seemed unfair to pass on certain things and change it going forward. She was opposed to the development of the lot from a safety standard.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Ms. Dowd stated that she thought the total number of units was 13 and would be reduced from the approved nine units to six units. Attorney Pelech agreed, saying that, at one time, there were 14 units between the carriage house and the mansion.

Ms. Carey Blake of 2 Beechwood Street stated that it seemed like the number of units went up and down with each variance and that it would be nice to know the long range plan. She thought the number of units should be kept to a minimum due to the treacherous intersection. She added that the Board was supposed to see up-to-date maps and where the sidewalk would end, and she felt that it would be best to postpone the petition.

Chairman Witham opened it up for discussion. Mr. LeMay stated that, given the density and traffic and reducing the building from eight to six units, it would be appropriate to see a comprehensive plan that included the total number of units available in the current mansion and how the traffic would be oriented, particularly if there was an easement to get into the property. Mr. Durbin said he concurred with Mr. LeMay and felt that it was best to postpone the petition. Mr. Moretti also agreed.

Chairman Witham stated if the Board postponed it to request additional information, and the Board could be succinct on what information they wanted. He had concerns about an overall plan for both lots, in terms of access in and off the property and the number of units. Mr. LeMay stated that the number of units was important because they were dealing with area per unit. Ms. Walker said the curb cut issue could be referred to TAC to see if it was feasible, noting that there was a pre-meeting with TAC about the issue. Chairman Witham said he wanted to make it clear that if the applicant simply showed up with new information, it didn't mean that the Board would support it. They would have to review it to see if it would support additional units.

*Mr. Johnson made a motion to **postpone** the variance and have the applicant include a site plan showing access in and off both lots as well as the driveway flow, a Master Plan showing the number of units on the proposed lot, a recommendation from TAC in terms of access on and off the property., and a rendering of the proposed building.*

Mr. Moretti seconded the motion.

Ms. Walker asked whether the Board wanted to leave the timeframe open so that the applicant could go to TAC, and Chairman Witham agreed.

*The motion to **postpone** the petition **passed** with all in favor, 6-0.*

III. PUBLIC HEARINGS – NEW BUSINESS

1) Case #9-1

Petitioners: Barbara Adams, etal, “the appellants”

Property: Deer Street, Russell Street & Maplewood Avenue

Assessor Plan 118, Lot 28, Plan 119, Lots 1-1A,1-1C & 4, Plan 124, Lot 12 and Plan 125, Lot 21

Zoning Districts (as configured on the date of the Historic District Commission hearing): Central Business B, Historic District, Downtown Overlay District

Description: Appeal decisions of the Historic District Commission

Requests: Appeal the decisions of the Historic District Commission to grant a Conditional Use Permit and a Certificate of Approval.

PRESENTATION BY APPLICANT

Attorney Susan Duprey was present to speak to the petition, along with Ms. Carla Goodnight of CJ Architects and the developer Mr. Chris Thompson. Attorney Duprey stated that a CUP had been granted to allow their building to be up to 60 feet tall and that the average height of their building was 57.2 feet tall. Their building was surrounded by buildings that were approximately 60 feet tall. She also noted that Form-Based Zoning would allow buildings to be up to 60 feet if they met certain standards, and what they were asking for was in concert with what surrounded them. Attorney Duprey reviewed the history of the site. She told the Board they must make their own decision, although they could consider the findings of the Historic District Commission (HDC). She went through the *de novo* procedure, saying that her job was to make the case for the CUP and the COA and emphasize that the HDC was right in granting them. Attorney Duprey reviewed the project history. She said she had 30 public meetings and spent months with the HDC and TAC and had received approval from the Trees and Greenery and Traffic and Safety Committees. She also noted that the City Council had allowed the CUP to continue to be available and extended it and that the project could not be built without a CUP. She said the project had overwhelming support from the City and its boards and that it would result in new taxes and many jobs.

Ms. Carla Goodnight then did an overview of the existing site plan and went through a video showing the project’s various sides and buildings.

Attorney Duprey stated that the City Council allowed a CUP for up to 60 feet and granted authority to the HDC for that purpose. She felt that the proposed project contributed positively to the neighborhood context and its quality as well as the overall historic character of the neighboring properties and District as a whole. Six elements in the Ordinance were met, which included publicly-accessible open space, underground parking, and high-quality building materials. She then addressed four of the six elements. She began with Public Civic Spaces and said the project would offer widened sidewalks, plazas, pocket parks, and playgrounds. She reviewed the Russell Street pocket park, the Green Street plaza, the North end plaza, and the Vaughan Street pocket park, saying

Draft for Approval

that they would provide pedestrian connectivity, public access, bike lanes, benches, and would also focus on the North end history of Portsmouth.

Attorney Duprey then reviewed Parking and Transportation and Historic Preservation issues. She said that the project would contribute \$20,000 toward preserving the history of the north end and would also exhibit archeological findings. She presented a view corridor presentation and noted that other elements being offered were the conference center with a large ballroom, the ground-floor retail of 45,000 feet, and the bike- and pedestrian-friendly connectivity. She also noted that the project would make a fair share contribution and donate land from the Sheraton and HarborCorp to make the Market Street roundabout possible.

Ms. Goodnight then presented a brief overview of the project prior to 2013 and where it presently was, saying that it used to be a flat design and roofline but had emerged into variable design and architectural elements and retail activation, along with garage and tower element changes and a roof garden. They went from a singular design to multiple design elements that included a more Portsmouth-style architecture.

Ms. Goodnight then addressed the HDC Objectives.

Preserving the Integrity of the District. Ms. Goodnight showed the break in mass and scale elements such as awnings and horizontal bandings that created a pedestrian-friendly experience. She showed the building setbacks and step-backs and the various building styles as well as the pedestrian-scale storefront areas, noting that the massing related to surrounding properties. She noted that the project was referred to as a single building but had been broken up into eight distinct buildings.

Maintaining the Special Character of the District. Ms. Goodnight noted the variety of materials that surrounded the site such as the cornices, brick, hip roofs, window expressions and the transitional style and blend of new and old architectural elements. The pilasters were designed on historic references and the materials changed and evolved throughout the building, such as the restoration brick, the wood siding, copper, firewalls, and granite lintels.

Assessing the Historic and Architectural Value of Building, Their Settings and Historic Events. Ms. Goodnight showed what was demolished during urban renewal to make way for large-scale development and urban expansion.

Encouraging Designs for New Buildings that Complement Historic Character, Sense of Place, and Contribute to the Overall Historic Character of the District as a Whole. Ms. Goodnight said they had been successful in responding to the surrounding massing by breaking up the building into several design elements inspired by historic Portsmouth architecture and using the highest quality materials to create a timeless architectural design.

Attorney Duprey then addressed further HDC objectives.

To Foster Portsmouth's Heritage and the Enhancement of Property Values. Attorney Duprey stated that their project would no doubt enhance property values.

Promoting the District's Contribution to the Education, Pleasure, and Welfare of the City's Residents and Visitors. Attorney Duprey stated that they would accomplish it by the new sidewalks, plazas, bike trails, utility upgrades, creation of jobs, and donating property for the Market Street roundabout. Attorney Duprey said that the project would also encourage the use of technology by using a catch basin for water as well as their advanced heating and cooling system.

Attorney Duprey then addressed the parking and traffic issues that were raised in the appeal, noting that nothing in the CUP or the COA gave authority to the HDC to review those topics and that it was in the Planning Board's purview. She said that parking and traffic had received positive approval from their own experts as well as the Department of Public Works, the Planning Department, and TAC's peer reviewer, Tech Engineers. The appellants had made all their arguments to all those boards, and not one expert had agreed with them. She stated that the invalidity of the Zoning Ordinance was also raised, and that the HDC and ZBA had no authority to overturn the Zoning Ordinance but that only the City Council and the Court could do so.

Attorney Duprey addressed the Master Plan, stating that the project comported with it by featuring a number of elements such as walkability, historic preservation, connecting neighborhoods, and public art. The Master Plan did not cite height for buildings, and she said that the Board should reject the argument that the project did not meet the Master Plan. She asked the Board to grant the CUP and COA in conformance with those granted by the HDC.

BOARD QUESTIONS & DISCUSSION

Mr. Durbin asked Attorney Duprey to review the last two elements of the CUP because he wasn't sure of the arguments being made. Attorney Duprey replied that there were no buildings on the site or in the area, so they proposed to make a contribution to the cemetery for the retaining wall to be restored. They also looked at it as historic preservation and would bring an archeological consultant to investigate the site. Anything historically significant would be preserved and displayed to the public. Mr. Durbin noted that the use of the term 'building' did not necessarily refer to what existed on site but could refer to a structure that was off site. Attorney Duprey replied that it could be something off site and that they were trying to be creative. They wanted to meet all the standards even though they did not have to, and they tried to contribute as much as they could to prove that they were making an effort with respect to each of the elements by trying to create important historic views of the City, making a visual connection to the Vaughan Street area, and making a large two-story breakthrough in the building to continue that visual connection.

PRESENTATION BY APPELLANTS

Mr. Jerry Zelin stated that he was an attorney and a resident and was appearing as a volunteer lawyer on behalf of the 100 residents and property owners who signed the appeal. He said they were appealing two decisions made by the HDC on June 10: 1) the granting of the CUP, and 2) the granting of the COA. Their concerns were that the building was just too big and that its height and mass violated the CUP Ordinance, the HDC ordinance, and the Master Plan. He said the secondary effects were too much traffic, safety issues, and not enough parking. Their suggested remedy was not to stop development but to break the monolith up into 2-3 structures and vary the building height. He noted that the size of the building footprint was 77,000 square feet, which was 50% larger than the Portwalk III footprint. The building's width was 780 feet facing Deer and Russell Streets and 600 feet along the railroad tracks. He gave examples of the Marriott Residence Inn being only 200 feet wide and the Portsmouth Municipal Garage being 451 feet wide. Mr. Zelin stated that most of the building's height was 60 feet except for two small appendages were 45 feet, making the average height of the building 57.2 feet above average grade. He stated that the mass was the largest in the north end of Downtown, and the gross floor area was over eight acres, or 350,000 square feet. He noted that the back of the building, with its loading docks and a tall retaining wall, was a 'whale'.

Mr. Zelin reviewed the components of mass, noting that the Whole Foods Market would be 43,000 square feet larger than the average Whole Foods store and would serve a regional market within a radius of 25 miles, causing a waste of gas consumption. The conference center would include a 9,000 s.f. ballroom which would be large enough to fit 1500 guests. HarborCorp's own documents

acknowledged that the projected use included conventions with over 750 guests. Mr. Zelin also noted the 96-room hotel with spa and the restaurant, and he added that the 19 residential condominiums would be luxury housing and not working-class housing. He said the parking had been advertised as 600 spaces with public parking in December 2013, but the plans approved by the HDC showed 523 spaces, and the Sheraton and Market Wharf Condominiums had easements to use 221 spaces. The consequence was that there would be little or no public parking.

Mr. Zelin noted that the Zoning Ordinance until April 2014 had stated that buildings would be 3.5 stories and 45 feet and up to 60 feet with a CUP from the HDC. In April, 2014, the City Council repealed the CUP Ordinance but exempted HarborCorp from that appeal because of a promise made by Mr. Thompson when he said that most of the building would be 45 feet tall and that only some of it needed 60 feet. He said the City Council took Mr. Thompson's word and that HarborCorp broke that promise by applying for and receiving a CUP for a building that was mostly 60 feet high. Mr. Zelin showed the Board affidavits from the Assistant Mayor, Mr. Jim Splaine, and Ms. Zelita Morgan regarding the promise. Mr. Zelin told the Board that the legal standards for the CUP was that the HDC may grant a CUP only if the proposed building and site design positively contributed to the context, quality, and overall historic character of the neighboring properties and the District as a whole. He said that HarborCorp failed to satisfy key terms because it did not contribute to the overall historic character of the District as a whole. He noted that the HDC should have weighed all the pros and cons, but they ignored parking and traffic problems arising from the building's configuration and increased mass. He felt that relying on the Planning Board's site plan review to regulate parking was folly because the site plan's regulations echoed what the Zoning Ordinance said for parking, and the Zoning Ordinance required no parking for the conference center and Whole Foods. He said it needed to go through the CUP process because the building was out of proportion to the rest of the District and had a monolithic and unbroken mass.

Mr. Zelin stated that the Planning Board also misapplied the CUP Ordinance because the Planning Board had to advise the HDC on whether or not to grant a CUP. The purpose of the Planning Board was to ensure coordination with the Master Plan, but they did not consider that. He said the Master Plan did not endorse a Downtown conference center, and he wanted the building to integrate the Downtown with the north end. He felt that HarborCorp did not do that because it instead walled off the north end from the Downtown area. He also stated that the HDC made an error on June 10, 2015 when Vice-Chair Gladhill and Mr. Rawling said that they preferred to leave the Vaughan Street Corridor unobstructed, but the railroad would not allow it. Mr. Zelin said DOT could compel the railroad to allow a crossing and felt that the HDC gave up too easily. He said that the project did not comply with the HDC Ordinance regarding the COA and that the Board had to determine whether the applicant was consistent with and furthered the purpose and objectives of the Ordinance, which was to preserve the integrity of the District and to enhance its historic character.

Ms. Martha Fuller Clark of Portsmouth stated that she had been a resident for over 40 years and was also a trained preservationist who had done work to protect and promote the City's architectural heritage. She said Portsmouth was known as one of the most desirable places to live, work and visit. She strongly felt that HarborCorp's building was too massive at 60 feet high and compared it to a wall, with no meaningful pedestrian walkthroughs. She felt the building was a hodgepodge of different style and patterns and was not consistent with Downtown architecture and that HarborCorp violated nearly all the qualities that made Portsmouth such a desirable city.

Mr. Zelin then returned and discussed traffic and parking issues and showed the traffic rotary for trucks and other traffic.

Mr. Larry Palreiro said he was a Portsmouth resident and thought traffic would increase by 55%

on weekdays and by 95% on weekends in streets surrounding the project as well as in front of HarborCorp. He felt that the HDC and Planning Board had ignored current traffic data of surrounding streets and had only looked at Harborcorp's future traffic estimates. He said there would be traffic gridlock that would affect the North end and surrounding neighborhoods, and he thought the HDC should reconsider those issues.

Ms. Patricia Bagley of 213 Pleasant Street stated that she was a resident and felt that the project would create a giant traffic rotary directing box trucks from Market Street to the area. Bike lanes would dovetail into shared lanes with delivery vehicles. Buses, limousines and cars would try to park. Tractor trailers would make wide turns into traffic and cross bike lanes. The project could create a dangerous 'right hook' situation at two sites. She noted a site in Boston where 14 related accidents had occurred. She felt that it was not a positive contribution and asked the Board to consider redesigning the building into 2 or 3 buildings to alleviate traffic hazards.

Mr. Duncan McCallum of 536 State Street stated there were 180 appellants who were committed to appealing the decision and willing to be part of a lawsuit. He wondered how the project got approved, citing the cry of protest from citizens back in 2013. The building was too big and out of character with the rest of the Downtown buildings, and it would create a plethora of problems which could not be cured, such as enticing hundreds of additional people to come Downtown. He felt that the proposed parking solution was a joke, and he indicated how the 523 parking stalls in the garage were reserved for different elements and that only 60 spaces were unreserved. He also noted that HarborCorp said it would shuttle people and cars by valet parking to the C&J Parking Lot at Pease, which he thought was a fantasy because there wasn't enough parking there on busy days and he felt that valets would use in-town public parking anyway. He also said there would be a loss of 22 existing parking spaces on the street when the roads were reconfigured.

BOARD QUESTIONS & DISCUSSION

Mr. Johnson told Mr. Zelin that he lived on Maplewood Avenue and biked to work downtown every day. He said he experienced many things Mr. Zelin had mentioned, and he was unclear on Mr. Zelin's opinion as to how the HDC were to consider that in their criteria. Mr. Zelin replied that it would not fall under the traditional HDC criteria for the COA because it focused on architecture and style, but the CUP Ordinance was broader. He didn't think it was intended to surrender the common sense principle about a sizable building, traffic and safety problems. He referred to the text of the CUP Ordinance, where it asked whether the project positively contributed to the overall historic character of the District as a whole. He thought it was a broad field and didn't see how Downtown with an abundance of vehicles looking to park gave anyone the sense of what Portsmouth was. He said that breaking the building up would allow trucks to make their turn through the cut-through before getting to Maplewood Avenue.

PUBLIC COMMENT

SPEAKING IN FAVOR OF THE APPEAL (OPPOSED TO THE PROJECT)

Mr. Dick Bagley of 213 Pleasant Street stated that the HDC passed safety and its traffic issues to the Parking and Traffic Safety Committee and to the Planning Board, and the resulting safety and traffic issues should have been explored by the HDC for alternatives. The issues were Russell Street on both sides combined pedestrian traffic with parking lanes for busses, together with a lane for bikes and a lane for shared truck and car usage. He felt that HarborCorp did not show the traffic entering the Sheraton, which created a massive congestion of safety issues, and he suggested they make a break in the building for a transition for trucks and cars.

Mr. Blair McCracken of 212 Pleasant Street stated that the building was too large and should be divided into separate buildings. He noted that the applicant had not mentioned the additional cost to the City for the conference center. He said that the citizens were promised lower taxes, but he felt that their taxes would go up and that the Board should consider the total cost of the project.

Mr. Nicholas Ciani of 60 Mill Pond Way stated that he was concerned over the public safety issues and asked to what extent the City had legal liability to ensure public safety or take measures to manage the risk. He noted that residents could sue the City if the Board was not duly diligent, and he asked the Board to consider the public safety issues.

Ms. Susan Denenberg of 44 Wibird Street stated that she was also a business owner and asked the Board to take a fresh look at things and not rely on previous decisions. She said the building was out of proportion and too big. She also noted that the types of jobs the building would create would include chambermaids, who made minimal wage and got laid off in the winter. She felt that it wasn't a great reason to promote jobs. She said that parking was essential and that it didn't make sense with the numbers that were presented.

Mr. Rick Beckstead of 1395 Islington Street stated that the scale of the project was out of proportion from the beginning. The HDC's decision on the mass and scale would determine everything that would transpire when the building was built. He said the Master Plan was one of the biggest issues because the City had followed the procedure for several years for all the other major projects except for HarborCorp. He said the City did not consider the railroad law that could be passed for pedestrians. He asked how a financial contribution would contribute to public welfare, indicating that the pocket park with benches and the restaurant that wasn't part of the original plan were not really public benefits. He also noted that only half the garden rooftop would be open to the public.

Ms. Nancy Brown of Bartlett Street stated that the project was a massive development for the community. The development would be bordered by the railroad that transported propane gas and commented on all the vehicles that would come into town.

SPEAKING IN SUPPORT OF THE PROJECT

Mr. Robert Donnelly stated that he worked for Whole Foods and that he had referenced the data showing their current national store size. He said they could limit their trailer deliveries.

Ms. Amy Crosby stated that she was a resident who worked at the Maine Whole Foods store and felt that the store did great things to serve and support the community by givebacks, donations, food drives, local hiring, and offering great benefits.

Mr. Gibson Kennedy of Marcy Street stated that Portsmouth was a vibrant city and that the project would contribute to it. He thought it was a fine building and urged the Board not to kill the project, saying it had been 18 months of serious efforts between the boards, the project leaders, and the citizens. The project would pay a net of a half-million dollars a year of revenue to the City, which would reduce taxes, and he urged the Board to deny the appeal.

Mr. Ken Murphy of 579 Sagamore Avenue stated that he also had a business on Middle Street and that he had not seen any gross error made by the HDC. He said that parking and traffic were not part of the Board's purview and felt that Mr. Zelin's suggestion about HarborCorp tricking the City Council was dangerous. He asked the Board to uphold the HDC's decision.

Mr. Todd Hunter of 1B Marsh Lane stated that he was representing the Music Hall. He said the HDC had a dozen meetings and a site walk, and all of them except for one voted to approve the

project. A great building would be created that would generate millions of dollars and that it would have enough parking, open space, setbacks, step-backs, and would pay homage to the north end.

Mr. Doug Bates stated that he was a resident and also President of the Chamber of Commerce and that he agreed with Mr. Hunter. He said the applicant had been in Portsmouth for over 26 years and was a great citizen, and he urged the Board to support the project.

Mr. Doug Pinsiero said he lived in New Castle but owned property adjacent to the site and that he fully supported the project because it was well-funded and forward thinking.

Mr. Anthony DeLorenzo of 33 Bow Street stated that he lived and worked in Portsmouth and also developed property, and he noted that it was difficult to develop property. He felt that the project was great for the City and looked forward to being able to walk to get groceries. He said Portsmouth was a city and a city had big buildings, and he felt that 60 feet was not that large of a building.

Ms. Kim Rogers of 579 Sagamore Avenue stated that she also represented Deer Street Associates. She believed that the appeal was without merit because proper process by the HDC was observed. She said the HDC followed its mandate, reviewed and evaluated the work of HarborCorp architects and made many recommendations. HarborCorp incorporated many changes made by the HDC and the public. She thought the appeal was filed because the opponents did not like the project size or didn't want a convention center, hotel, or unaffordable housing. She also noted that affordability of housing should not be applied to the project and was not an HDC matter.

Mr. Jeff Kissell of 21 Wallace Road said he agreed with those who spoke before him and had 301 names on an appeal asking the Board to overturn the appeal, which he gave to the Board.

Ms. Dixie Tarbell of Driftwood Lane said she thought it was a history-making project in a positive sense that would benefit Portsmouth and hoped the appeal got overturned. She said that Mr. Thompson had not broken a promise but that it was an interactive process.

Mr. Drew Schulthess of 14 Central Avenue said he owned a business and felt that the project was an incredible process. He didn't feel that anything brought to the table that evening was compelling or factual. There were several condominiums in the area that would need a local supermarket.

Ms. Barbara DeStefano of 99 Hanover Street said she had followed the project at every meeting and was 100% in favor of it. She thought it was a great location and would add to the area.

Mr. Jim Jalbert said he was the owner of C&J Bus Lines and had sent a letter to the City stating that they were able to run to run parking from a satellite lot at Pease. He felt that if people were staying in hotel rooms or attending the conference center, it could be assumed that they all had parking or could get to the conference center. He never saw a Master Plan that was anything more than a plan to help formulate a decision. He felt there was no reason now to allow the project to go forward.

Mr. Paul Ford of 816 Middle Street said he had seen his city grow and felt that the Northern Tier was an exciting development and that HarborCorp would bring a lot of benefit to the City.

Mr. Paul McEachern Of 70 Dennett Street stated that he used to walk through the Northern Tier when it was a vibrant neighborhood and people congregated at the train station. For the last 47 years, the area had been leveled, and for most of his life it was vacant. There was a chance to make the area come alive. He said history wasn't a relic to be worshipped and set aside and not change. He thought the project was appropriate and would benefit the whole community. He also noted that a lot of buildings were 60 feet and that there was lots of mass on Market and Bow Streets.

Mr. George Carlisle of 18 Congress Street said it was the 12th time that he had spoken in favor of the project and that the public benefit of the project was overwhelming. He felt that it was the most important development that had happened in that area in his lifetime. Mr. Thompson had listened to everything that everyone said and had designed a beautiful building on an ugly parking lot, and he felt that the building infrastructure worked and would bring vibrancy to the area along with tremendous economic benefit. He noted that every job was important.

Ms. Lily Beyer of 218 Rockland Street said she felt that the traffic studies could be massaged to say what they wanted. They may be overestimating the people who would drive to the conference center because they would probably take the bus, and she felt that congestion and slow cars were safer than people speeding down Maplewood Avenue. She thought the project should be looked at within the existing fabric of Downtown, which would be less costly in terms of utilities and roads than putting the same project at Pease or on Woodbury Avenue.

Mr. Will Gatchell of 120 Hillcrest Drive said he had been part of the project for 10 months and thought it was an amazing one that supported the historical character of the City. One of the benefits was the 50 bike racks, which would allow his family to bike to it and enjoy the City.

Mr. Steve Marchand of Portsmouth stated that it seemed clear that the argument needed to have evidence of disagreements. He thought the process was laborious and that it was difficult to develop a downtown place in Portsmouth. He noted that three major New Hampshire communities had conference centers and that Portsmouth also needed one, and he felt that the project's center was stunning compared to the other three.

Mr. Russell Thibeault said he the economic consultant on the Northern Tier project and referred to the impact of the project on property values and economics. He felt that the neighborhood was the most vibrant urban center in northern New England and had attained a critical mass. He thought the project would have a positive impact on the neighborhood's property values and the investment climate compared to the existing vacant lot.

Mr. Chris Thompson of HarborCorp stated that he and his team had been on the project since the 1990s, and he thanked the Board for the time and energy they put in that evening. He referred to Mr. Zelin's claim that he had broken a promise, which he said he took to heart and wanted to respond. Mr. Thompson stated that he read the affidavits, neither one of which mentioned a promise. He had never broken a promise made to Portsmouth.

Mr. Paul Young stated that he was a direct abutter and owned two properties on Deer Street. He said he went to all 30 public meetings and felt that lot of misstatements were presented that evening, like the video snippets that didn't show before-and-after situations. He read a letter from the manager of 233 Vaughan Street and said it was sent to the Planning Board and the HDC in March 2015. He stated that the 233 Vaughan Street condominium owners supported the Whole Foods project and had always been aware of the future HarborCorp development and were excited about it.

Ms. Sherry Young of 33 Deer Street stated that she worked for HarborCorp and addressed the issue of three separate buildings, saying that they had considered that option but instead created the two-story cut-throughs that provided pedestrian access to the other side.

SPEAKING TO, FOR, OR AGAINST THE PROJECT

Mr. Paul Mannle of 1490 Islington Street asked the Board to support the appeal and return the project to the HDC to break the project into several buildings with varied rooflines.

Ms. Robin Rousseau of 871 Middle Road stated that she also owned property near the project and that there were 200 people who had applied for the appeal. She was concerned about the scale of the building, the traffic and the parking.

Mr. Joe Famularo of 141 Mill Pond Way stated that the project was in his neighborhood and he was happy that it had a walkthrough. He looked forward to the building and thought that the assertion that it was a monolith was opinion only. He said it would add to the neighborhood, bring property values up, and make the area safer. He asked the Board to approve it.

Ms. Barbara Bowlus stated that she was a 29-year resident of the north end. She told the Board they had been asked to consider the Master Plan as a concept and not binding, and she asked them to think about the meaning of that statement because people without money or power had a chance to give them input through the Master Plan. She felt that the project did not coincide with it because it was a huge building and said that many other citizens felt the same way.

With no one rising, the public hearing was closed.

APPELLANT FINAL STATEMENT

Mr. Joe Caldarola stated that the project violated the Master Plan, and that he supported developing the area in a way that integrated the neighborhood to Downtown, not blocking it. He said the building was more like Portwalk and oriented its most interesting side internally because the plaza faced the Sheraton, and that it would not become the new Market Square, which was a pedestrian center. He felt that the HDC forgot that it had jurisdiction over the large issues and that the purpose of the Ordinance was to preserve the integrity of the District and maintain its character. The extension of Vaughan Street, the location of the plaza, and the human-scale architecture were big issues and what the citizens would experience. He thought what was important was how the building fit and developed that area of town, and he thought the HDC should have insisted that Vaughan Street be extended through the project from Portwalk to Vaughan Street. He said that not doing that was fatal to the application and that the project failed to comply with the Master Plan and the Historic District Ordinance.

Mr. Jerry Zelin stated that it was a *de novo* hearing and that many citizens had said that the Board should defer to the HDC decision. However, the HDC failed to consider the Master Plan and Planning Board did not address the Master Plan. He asserted that the HDC process was tainted because he went to almost all the work sessions and there was no public hearing until the very end, when it was so late at night. He didn't understand how the HDC approved a building with all that mass, seeing that they had a four-stage process for COAs, and Stage 2 was for mass. He therefore reasoned that early in the process, the HDC took a straw vote and approved the mass, using the criteria that applied to a conventional COA and did not pay attention to the CUP criteria. As June 10 approached when the HDC was to have its first public hearing on the CUP, the HDC Chairman asked the Planning Department to write a decision granting the CUP, a decision that the HDC could rely on if it chose to grant the CUP. Mr. Zelin stated that the Chairman did not ask the Planning Department to write an alternative decision that the HDC could use had it chosen to deny the CUP. Therefore, he felt that it was a clear predetermination. Mr. Zelin said that the Planning Department then wrote an argumentative proposed decision that was shared with the HDC the evening of the night of the public hearing, and they did not share it with the public. The proposed decision contained some errors of fact and was one-dimensional because it looked the building's pros only and ignored the traffic and parking problems. The HDC stumbled into the situation by circumstance, but they suffered from the 'Patty Hearst Syndrome' because the bigger the problems were, the more work sessions they had, and the more work sessions they had, the more invested they became in the details and started acting like architects. Their egos were invested.

Mr. Zelin also noted that there was a cut-through at Vaughan Street that couldn't go across the railroad tracks because the back of the building had a retaining wall that separated the cut-through from Vaughan Street on the other side of the tracks. He stated that the appellants were not against the building but just asked that it be broken up so that it wouldn't be 50% larger than the largest building in the north end.

APPLICANT FINAL STATEMENT

Attorney Duprey read the statutory decision of the Planning Board about the CUP and stated that there was no mention of the Master Plan and nothing unclear about what the provisions were. As far as traffic and parking, she said that one would think TAC, TECH, the Planning Board and others were all idiots and not a single new argument had been heard that evening related to an Ordinance that did not use the word 'car' or 'parking'. She said there was no reason for the Board to weigh into the parking and traffic issue because it was already in a courtroom, and the project had spent a lot of time and money figuring it out and listening to concerns from all. She asked whether or not they all had confidence in TAC, the HDC, the Planning Board, or the project's peer reviewer. She hoped that the Board would not overturn 18 months of work on an issue that was clearly devoted to the Planning Board. Attorney Duprey stated that it was undeniable that the project met every standard. Relating to the remarks about Mr. Thompson, she said that if the City Council had been so offended by his statement, they would have overturned the project. She asked why the appellants had not approached the City Council if they thought Mr. Thompson lied.

MOTION ON THE APPEAL USING HDC REVIEW CRITERIA

Chairman Witham stated that the Board had a lot on their plate and had to make a decision. He referred to Mr. Johnson's statement regarding traffic, safety and parking about the idea that the CUP had a public element to it and that it felt like a stretch to grab parking and traffic flow and pull that into the public benefit. Chairman Witham said that the CUP was not limited to parking and traffic but addressed open space, materials, view corridor protection, and so on and that the Ordinance gave six examples, which the project made an effort to address all of them. He said he had confidence in the Planning Board, TAC, the DPW, and the Planning Department to make decisions, and he was struggling to pull that in. He noted that several professionals were involved with traffic, but all he got from the appellants was a traffic presentation with no professional name listed to it, so he felt it was difficult to put a lot of weight on it and he felt that it had been thoroughly reviewed. He said he would review the way the CUP was written and the six examples it gave.

As for the COA, Chairman Witham stated that there was no talk from the opposition of material, window, and so on and that it all came down to one building versus three. They could say that it was the largest building in the Downtown area, but it was also on the largest lot. He said he was certain that the HDC had addressed breaking up the building, and he personally felt that, if a building of that mass were broken up into three buildings, each building would probably be designed as an individual one and that the scale and mass would be more imposing. He thought the project had done a good job of creating a feeling of eight separate buildings. Chairman Witham thought it would come down to the Board reviewing the CUP and the public benefits and asking whether or not the project had been successful in doing that. He referred to the images of bicyclists getting hit by trucks and asked whether or not three separate buildings wouldn't create more hazardous intersections. He stated that the COA would come down to mass and scale.

DISCUSSION

Vice-Chair Parrott said he had walked the lot a few times, as well as the neighborhood and thought the lot was odd as well as one of the strangest pieces of property he had ever seen, and he compared it to a misshapen boomerang. He also noted that it had serious grade changes, all of which would be troublesome to develop. He said that what struck him when he stood at the high point opposite the corner from Russell and Deer Streets was how high the adjacent buildings were, like the Sheraton, the 233 Vaughan, and there wasn't that big of a difference between those buildings and the proposed building. The buildings on the Hill were more off to the side; the orange building the sideline of it if you stand with you back to it lines up with the middle of the inbound lane of Russell Street, and I would have thought it was more directly across the street from the project, but it's not.

The nature of the lot, given its shape and high land values, would inevitably result in having a large structure on it, and the structure would be long because the lot itself was long. Vice-Chair Parrott said he read the material over and over and found no explanation as to why it would be good if the building were broken up. It would create alleyways, but there was no explanation as to why that would be a good thing. He didn't think it was simply because of different architectural styles because the proposal already had that. He didn't understand breaking the building up into pieces to get access to the railroad track. As for the comment that was continually made about the building being too big, he didn't see any numbers indicating what would be just right. There were no suggestions in the criticisms. He said he was looking more at the practicalities and the process that resulted in what was in front of the Board. He didn't recall reading criticism of the architectural detail and variety and the chosen elements, so he assumed it was well received by everyone.

Mr. LeMay stated that he had a hard time connecting the problems described by the appellant with the solution proposed and wasn't sure how breaking up the building would help in terms of parking. He found it a tenuous connection. Looking through the application, he found that the complaints were mostly procedural issues. There were also arguments about spot zoning, which the Board wasn't concerned with. He felt it was difficult to find the areas related to the decision the Board had to make in terms of the CUP and the height of the building and the complaints that were made.

Mr. Durbin said he agreed with Mr. LeMay, and when he had listened to the opponents' comments, he had a hard time making a logical connection between the arguments and the criteria that the Board was being asked to apply, except for mass and height. He saw how those issues were relevant with the COA and the CUP. He felt that one thing overlooked with the CUP was that there was a lot of talk about the last part of the paragraph that related to positively contributing to the context, quality and overall historic character. The primary consideration triggering the Board's review of the CUP was the context of building height. Looking at it in that context, it brought forward different considerations and narrowed things down. There was certain legislative history brought forward, and he tended to agree with Attorney Duprey that he would never look beyond the plain words of the Statute or the Ordinance unless he found that it wasn't clear, and he found no ambiguity. He said he struggled with some of the legislative history that had a case citation because he hadn't seen a copy of the things being referred to. He thought they were tenuous arguments that he disagreed with. With respect to the scale, mass and height of the building, he felt that the lot was very unique and extremely large and lent itself to a larger building. When he walked out to the lot and looked at the context, it looked like what had already been developed in the area, and he felt that the project was the character of the area. For those reasons, he felt that the project met the elements that would compel the Board to affirm the COA and the CUP.

Mr. Moretti stated that, like Mr. Durbin and Vice-Chair Parrott, he had gone to the site many times and also took a walk around town. Looking at the building and seeing how the developer took the time to incorporate as much of the City as they could, as well as having all the elements that brought character to that area, he saw no problem at all. He said that part had been covered, and parking and traffic were not part of the Board's criteria, even though he could understand the concerns.

Chairman Witham stated that there was a lot of reference to the Master Plan and the walkability and how it flew in the face of the Master Plan. He found the new Vaughan Street very walkable and pedestrian-friendly, and it was the same as what was proposed, so he didn't believe that it was not pedestrian-friendly to walk along. He said he had not been convinced that those items flew in the face of the Master Plan.

Mr. LeMay noted that he read the Historic District zoning and the relevant piece of the Master Plan, and he believed that the HDC did touch on the points and made findings that appeared reasonable to him. He did not see anything that would make him want to overturn the case, and he had not heard anything that evening that would do so.

Chairman Witham told the Board that they could either make two separate motions, one for the CUP and one for the COA, or make them both together.

*Mr. Durbin made a motion to **grant** the Conditional Use Permit, and Vice-Chair Parrott seconded.*

CONDITIONAL USE PERMIT

Mr. Durbin stated that the proposed building and site design positively contributed to the context, quality, and overall historic character of the neighboring properties and the District as a whole. He stated that there were publicly-accessible open space areas, underground parking, use of high-quality elements, significant scaling elements, restoration, and protection of view corridors. He noted that the project was very large, but by walking through the area and reviewing all the exhibits and plans submitted by the applicant, it looked like it blended in very well with the area. The materials used and the thought gone into them were high quality, and he believed the project made open spaces accessible to the public, which was a positive thing. He did not think the project would degrade the District as a whole, and he thought it would contribute to the development that had already occurred in the area. The setback of the building in certain areas lent itself to pedestrian traffic, and the applicant had also proposed certain contributions to the City to improve the historical heritage, some of which was the North Cemetery, the retaining wall, and the archeological artifacts as an on-site exhibit. Mr. Durbin felt that there was not really a view corridor on the site as it existed because it was an empty lot, but what one was looking at was buildings, which he didn't think detracted from anything. He also felt that a public space on top of the building would give new views and would not diminish existing views on site. He had heard safety concerns about traffic and parking but didn't feel that they fit within the context of what was relevant for the Board to consider. He stressed that the reason the CUP was requested was because of the height of the building, and he didn't think the building was imposing. For those reasons, he moved that the CUP be approved.

Vice-Chair Parrott stated that he concurred with Mr. Durbin and had nothing to add.

Chairman Witham stated that he also would support the motion because the Board didn't have a lot of history to refer to, noting that it was only the second CUP that the City had granted and it was new territory. The Ordinance noted six provisions, and he felt that the applicant made a good-faith attempt at addressing all of them. Chairman Witham noted that the opposition said that the project had to contribute to the District as a whole, but he felt that was tricky and didn't see how it would detract from areas like Market Square and Bow Street. Some of the developments held the historic buildings, and he felt that the project would help contain the core of what was important and real Downtown and that it met the CUP criteria. He said he couldn't see how traffic and parking and trucks making turns fell into the criteria.

Mr. LeMay noted that the original CUP had stipulations and said the Board was not eradicating them. Chairman Witham agreed that it would be good to include the previous stipulations. Mr. Durbin stated that the Board was affirming the decision of the HDC to include considering the stipulations, and Vice-Chair Parrott agreed.

*The motion to **grant** the Conditional Use Permit with the stipulations carried over from the HDC decision **passed** with all in favor, 6-0.*

CERTIFICATE OF APPROVAL

Chairman Witham stated that, as a minimum, the Board should address the HDC review factors and criteria. He noted that there were four items on each. Ms. Walker suggested referencing the other sections as well, which was the Statement of Objectives and Purpose.

*Chairman Witham passed the gavel to Vice-Chair Parrott and made a motion to **grant** the Certificate of Approval. Mr. LeMay seconded.*

Chairman Witham said that 180 people may think he was crazy, but the Board had all come in with a clear mind and looked at all the criteria. They had listened to everyone and gone through hundreds of pages of information and didn't take it lightly. Chairman Witham then went through the criteria.

- 1) The integrity of the Historic District would be preserved and the project would strength the local economy, conserve property values, and promote the education, welfare, and pleasure of Portsmouth's citizens and visitors.
- 2) The special character of the District would be reflected in the scale, mass, location and style of buildings. Chairman Witham stated that the project was successful in doing that. Even though the building was massive, it was on a massive lot, and the project had done a successful job in breaking up the building with different treatments. The project had a nice variety, and he appreciated that it came up from the Market Street extension and made a nice entryway into the City, and he liked the bookends look of it. The scale, mass and location were done very well.
- 3) The project would retain the historical and architectural value of buildings and structures, their settings, and their local or national significance in terms of the represented time period, visible architecture, construction materials, or relationship to a historically-recognized individual or event. Chairman Witham felt that the project successful did so by the motifs they incorporated from around the City.
- 4) The design for new buildings, additions, and the reuse of existing buildings would complement And enhance the City's architectural and historic character and contribute to its sense of place. Chairman Witham said that obviously there was no reuse of buildings because there was no existing building.
- 5) The project would support Portsmouth's heritage and economic well-being through the conservation and enhancement of property values. Chairman Witham noted that many of the direct abutters had spoken in favor and mentioned that it would help their property values.
- 6) The project would support the District's contribution to the education, pleasure and welfare of the City's residents and visitors. Chairman Witham noted met in particular that the project would promote education by their archeology process, and he also noted the public parks and rooftop park.

Chairman Witham felt that the project would render the site architecturally and historically significant by the styles, materials and technology used. The advanced technical systems that were incorporated would be welcomed by the City. The styles were varied and complimentary to the overall character of the District. The mass would always be an issue, but he was comfortable with the way it was broken down and set down among public walkways. He said he thought the Board was comfortable with 60-ft. building heights and noted how many buildings were 60 feet tall.

As for the Review Criteria and the Special and Defining Character, Chairman Witham said that Mr. Durbin had touched upon it, and one would see from looking at the area that the project was very complimentary to what existed in the area. The real challenge would be if the north end neighborhood still existed and was being torn down because of the project, but they were dealing with a parking lot. He found the project complimentary to the buildings that surrounded it.

Regarding the second criteria related to mass, scale, and architectural details, Chairman Witham felt that the HDC did their job. Chairman Witham said the Board had touched on the criteria addressing exterior design and felt the project was successful. He liked the bookends feel of the project and the metal elements of the parking garage. Related to the criteria of encouraging the innovative use of tech and materials, Chairman Witham felt that the water treatment, roof gardens, and rain collection met the criteria. The fact that the project was going to the Gold Certificate was not an easy thing to do, and they were using quality materials and construction. Chairman Witham stated that he had reviewed the packet thoroughly and thought the project and the HDC had both done a good job.

Mr. LeMay stated that he had a similar experience looking through the packet and seeing how the project fit in with surrounding buildings. He thought the building had come out looking like an evolution of what was done 100 years ago but that it was brought forward as it would have evolved during the past century. He said the project made use of materials similar to those used from earlier times and felt that what the HDC did in terms of their decision and stipulations was good.

Mr. Johnson stated that he agreed with Chairman Witham and Mr. LeMay and felt that a lot of care was taken in material choices to meet the integrity of the District criteria. He also felt that the project itself would hopefully be a hub and an alternative to Downtown that people would utilize by using the hotel, eating, and shopping at the building and then going into the rest of Downtown. The north end was not Market Square and did not have to get the same precedent. Mr. Johnson thought the project was a good mix between contemporary and historic approaches, which met the special defining character of the District criteria, and he noted the glazing, decorative metal work, modern materials, and waterstruck brick. He said it was a tall building for Portsmouth, but noted that there were tall buildings in every city. He felt that the materials, the façade, and the banding mattered and brought the building down to a human scale. As far as the height and massing, he noted that it fit with the Sheraton and 233 Vaughan Street. In respect to the Hill properties, the project added vibrancy to the north end and would encourage more growth and would anchor further development that hopefully would be as willing to go through the same level of refinement that HarborCorp had.

Vice-Chair Parrott asked Chairman Witham whether he wished to carry the previous stipulations from the HDC forward, and Chairman Witham and Mr. LeMay agreed.

*The motion to **grant** the Certificate of Approval with the stipulations carried over from the HDC decision **passed** with all in favor, 6-0.*

IV. OTHER BUSINESS

There was no other business.

V. ADJOURNMENT

*It was moved, seconded and **passed** by unanimous voice vote to adjourn the meeting at 11:55 p.m.*

Respectfully submitted,

Joann Breault
Recording Secretary